



## DEPARTMENT OF PUBLIC SAFETY POLICIES & PROCEDURES



### POLICY NUMBER

**OPR:33**

**EFFECTIVE  
DATE:  
05/10/2010**

**ORIGINAL  
ISSUED ON:  
06/18/2007**

**SUBJECT: ARRESTS**

**REVISION NO:**

**4**

### 1.0 PURPOSE

The purpose of this policy is to provide Department of Public Safety commissioned officers with guidelines for executing arrests.

### 2.0 POLICY

It is the policy of this Department that all arrests made by departmental personnel be conducted in accordance with established legal principles. All officers of this Department are expected to be aware of, understand, and abide by the federal, state, and local laws governing arrests. This policy sets forth the fundamentals of the arrest procedure.

### 3.0 APPLICABILITY

This policy is applicable to all Department of Public Safety commissioned personnel.

### 4.0 REFERENCES

- A. CALEA Chapter 1 – Law Enforcement Role and Authority
- B. CALEA Chapter 70 – Detainee Transportation
- C. CALEA Chapter 71 – Processing and Temporary Detention
- D. CALEA Chapter 82 – Records
- E. New Mexico State Constitution
- F. 29-1-16 NMSA 1978
- G. 29-2-18 NMSA 1978
- H. 31-1-5 through 31-1-8 NMSA 1978
- I. United States Constitution

### 5.0 DEFINITIONS

- A. **Arrest** – The taking of a person into custody by legal authority.
- B. **Arrest Warrant** – A written order issued by a judge, magistrate, or other proper authority that commands a law enforcement officer to place a person under arrest.
- C. **Child** – A person who is less than eighteen (18) years of age.
- D. **Citizen Contact** – A consensual encounter between a police officer and a citizen that may be initiated by either party, but one where the citizen is free to leave at any time.
- E. **Exigent Circumstances** – Conditions, facts, or events that call for immediate aid or action.
- F. **Investigative Detention** – Temporary detention, for investigative purposes, of a person based upon reasonable suspicion that the person has committed, is committing, or is

about to commit a crime, under circumstances that do not amount to probable cause for arrest (also known as a “*Terry*” stop).

**G. Probable Cause for Arrest** – Facts or circumstances that would lead a reasonable officer to believe that a crime has been committed, is being committed, or is about to be committed, and that the person arrested committed the crime.

**H. Reasonable Suspicion** – The degree of suspicion of criminal activity that justifies an investigative detention, but not an arrest.

### 6.0 PROCEDURE

**A. Arrest Authority** – New Mexico State Statute 29-2-18 empowers State Police officers to be conservators of the peace within the state, with full power to apprehend, arrest, and bring before the proper court all law violators within the state.

**B. Officer Discretion** – A critical aspect of a peace officer’s authority is that of discretion. Officers must take into account multiple factors when carrying out their duties. Discretion can be a very valuable tool for officers when used properly, and can help resolve problems and conflicts. Several factors need to be considered by an officer when making discretionary decisions. These factors include the effect of their actions on community relations, what action would be most effective and efficient for obtaining departmental goals, and the officer’s role in society. Not all violations of the law must be dealt with by prosecution and/or incarceration. Officers have the power in certain situations to take alternative actions. Some examples of these alternative actions include:

1. Verbal or written warning and release.
2. Issuance of non-traffic citations in lieu of arrest.
3. Referral to local support agencies.
4. Taking a complaint for prosecutorial review.

There are limitations as to when an officer can use discretion. In situations where state law mandates that specific actions be taken, an officer does not have any discretion. When discretionary questions arise that require assistance, an officer should confer with a supervisor or senior patrolman if a supervisor is not available. Supervisors should monitor their subordinates to ensure that the discretion they exercise is appropriate and consistent with departmental policies, procedures, and law.

**C. Exigent Circumstances** – Such emergency situations are those that would cause a reasonable person to believe that entry (or relevant prompt action) was necessary to prevent the following:

1. Physical harm to the officers or other persons.
2. The destruction of relevant evidence, the escape of a suspect.
3. The destruction of property.

**D. Basis for Arrest** – Officers shall conduct arrests based upon probable cause and exigent circumstances or following the issuance of an arrest warrant. **Officers shall not make any arrest based solely on information received from an anonymous source or anything less than probable cause, e.g., a mere suspicion, a gut feeling, or a hunch.**

New Mexico case law does not permit arrests for non-jailable offenses on the basis of probable cause alone.

**E. Probable Cause** – May be established for an arrest by one or more of the following:

1. Observations of the officer.
2. Information or evidence obtained during an investigative detention (“*Terry*” stop) or during a consensual citizen contact.
3. An identified citizen’s specific complaint.
4. Information provided by a department-documented informant.
5. Information provided by other law enforcement sources.

**F. Arrest Warrants**

1. An arrest without a warrant is justified when based upon probable cause and exigent circumstances. Otherwise, an arrest warrant is required.
2. Arrest warrants shall be obtained from any legal authority empowered to issue such warrants in its jurisdiction.
3. Such warrants shall adequately identify the person to be arrested. The warrant shall also provide such other information as required by law.
4. Any officer/agent to whom an arrest warrant is delivered shall examine it to ensure that it is valid on its face.
5. Once received, an arrest warrant shall be executed without delay, unless the circumstances of the case dictate otherwise.
6. No arrest shall be made at a time or in a manner contrary to any expressed limitations based upon the scope or language of the warrant.

**G. Investigative Detention**

1. Officers shall conduct investigative detentions based upon reasonable suspicion that the person detained has committed, is committing, or is about to commit a crime.
2. Officers shall not prolong the investigative detention beyond a period necessary to accomplish the purpose of the detention. Officers should be aware that many factors can influence a court to view a detention as an arrest, such as an unnecessarily prolonged detention, removing or moving an individual from the original location, an unnecessarily prolonged display of firearms, or the use of handcuffs.
3. Officers who reasonably believe that a person under investigative detention may pose a threat to their safety or those around them shall conduct a “frisk” or “pat-down” of the detainee’s clothing for weapons.
4. If, during the investigative detention, it becomes apparent that there is probable cause to believe the detainee has committed a criminal offense, the detainee shall then be placed under arrest and the procedures for arrest set forth in this policy shall be followed by the arresting officers.

**H. Arrest Procedures**

1. Unplanned Arrests
  - a. Shall be done in accordance with current law and departmental training, and as safely as possible for the officer/agent, arrestee, and bystanders.

### 2. Planned Arrests

- a. If possible, arrests shall be planned in advance with a supervisor or other experienced officers.
- b. Where advance planning and consultation is not possible, the arrest shall be made in accordance with the arresting officer's departmental training in arrest procedures.
- c. Arrests shall be made at a time and place and in a manner that will maximize the probability of a successful arrest and minimize the danger to officers and innocent bystanders.
- d. When practical, the person being arrested will be advised of the reason for the arrest, including related criminal charges, prior to being detained or handcuffed. If, for safety reasons, the officer feels it is not practical to do so at the time of the arrest, the arresting officer will comply with this requirement once the person is safely restrained. Officers not in uniform shall display their badges and credentials when making an arrest to ensure proper identification.

### 3. Use or Show of Force During Arrests

- a. Officers shall use only the level of force that they reasonably believe is necessary to make an arrest in accordance with the Department of Public Safety's Use of Force policy.
- b. Weapons shall be displayed during an arrest only when it is reasonably necessary to ensure the safety of the officers or others at the scene and for the successful completion of the arrest.

### 4. Safety Precautions

- a. Officers shall approach every arrest situation with the understanding that any arrest, regardless of the offense, may present an element of danger. Therefore, officers making arrests shall take all reasonable precautions to ensure the safety of the arresting officers, the arrestee and any bystanders. These precautions include, but are not limited to, the following:
  1. Officers/agents shall conduct protective sweeps of the premises or area where the arrest occurs to ensure no other persons or weapons are present that may present a danger to the officers or the arrestee. The sweep must be in accordance with current law and departmental training.
  2. Following an arrest, officers shall not normally permit arrestees to leave the immediate area of the arrest for personal reasons. In exceptional cases where it is deemed necessary to allow it, the arrestee shall first be searched for weapons and then be accompanied and closely monitored by an officer.
  3. Whenever possible, arrests shall be made in a location and at a time where the arrest will not pose a threat to the safety of the public. Officers and supervisors should always use good judgment when effecting arrests and the need for the arrest must take into consideration the officer's, the public's, and the potential arrestee's safety.

### 5. Arrests on Private Premises

- a. No officer shall enter premises owned or occupied by a third person to make an arrest, unless the officer has a legitimate, separate legal basis for entering the premises. Such a basis may be provided by any of the following:

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1. Possession by the officer of a search warrant for those premises.
  2. Consent of a person empowered by law to give such consent.
  3. Probable cause and exigent circumstances exist for the arrest of a dangerous felon.
6. Restraint of Arrestees
- a. For the safety of the arresting officer and the arrestee and after being taken into custody, all arrested persons shall be handcuffed behind the back, with the handcuffs double-locked, unless circumstances dictate otherwise as provided by departmental training.
  - b. Other lawful forms of restraint may be used when necessary for the safety of officers, arrestees, and others, to include leg irons and flex cuffs. Should these other types of restraints be utilized, they must be in accordance with the manufacturers recommendations for use.
  - c. Arrestees shall not be restrained in a four-point restraint.
  - d. Arrestee shall not be handcuffed to any part of a department vehicle, except in emergency situations.
  - e. Arrestees shall not be handcuffed together, except in emergency situations where no other restraints are available or when other officers are unavailable for security and transport.
  - f. The arrestee shall be seatbelted in the transport vehicle.
  - g. Should the arrestee be physically disabled, the arresting officer shall rely on department training to evaluate the necessity and manner in which to use restraint devices.
  - h. In situations where the arrestee is being transported for an extended period of time, the arresting officer shall evaluate the situation and use his/her discretion as to whether the arrestee should be handcuffed behind the back. Attention should always be paid to officer safety.
7. Post Arrest
- a. Officers shall be aware that following an arrest, they are legally responsible for the safety of the arrestee, any victims, and any bystanders present. Therefore, officers shall take all steps reasonably necessary to protect:
    1. Victims and bystanders from the arrestee.
    2. The arrestee from self-injury or injury by others. Officers shall not allow the arrestee out of their immediate presence until the arrestee is properly secured and transported to a detention facility.
  - b. Following an arrest, any person accused of a crime is entitled to have reasonable opportunity to make three telephone calls beginning no later than twenty (20) minutes after the time of arrival at a police station, sheriff's office, or other place of detention. For purposes of this section, any district or sub-district office will constitute a police station.
8. Search Incident to Arrest
- a. Officers shall conduct a thorough search of the arrestee.

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- b. Any criminal evidence discovered during the search of the arrestee's person shall be seized and preserved in accordance with the DPS evidence policy *OPR:17 Evidence / Property Handling*.
  - c. Whenever practical, searches incident to arrest shall be conducted by officers of the same gender as that of the person being searched.
  - d. The search incident to arrest may include not only the person of the arrestee, but also areas within the reach and control of the arrestee.
9. Strip and Body Cavity Searches – Refer to department policy *OPR: 42 Search and Seizure* for details on strip and body cavity searches.

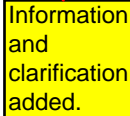
### I. Ensuring Child Safety Upon Arrest

- 1. An arresting officer shall at the time of an arrest inquire whether the arrestee is a parent or guardian of minor or dependant children. The officer shall make reasonable efforts to ensure the safety of minor or dependant children at risk as a result of an arrest in accordance with guidelines established by the Department of Public Safety (DPS) in consultation with the Children, Youth, and Families Department (CYFD).
  - a. The officer shall ensure whether arrestees have minor or dependent children who may be present or at another location at the time of the arrest. The officer shall indicate that in the arrest/booking report.
  - b. Proper arrangements shall be made for the temporary care of children to ensure their safety and well-being.
- 2. Whenever it is safe, an officer shall make an arrest away from children or at a time when children are not present.
- 3. Whenever it is safe, an officer shall allow an arrestee to assure his or her children that they will be provided care in their absence. If the situation is not safe or if a conversation between the arrestee and children would prove to be non-productive, the officer shall explain the reason for the arrest to the children in age appropriate language and reassure the children that both the arrestee and the children will be taken care of.
- 4. When an arrest or search warrant is planned, the ages and likely location of the children shall be taken into consideration when determining the time, place, and logistics of the arrest or search.
- 5. If children are present during an arrest or if the arrestee indicates that children will be home without an adult caretaker, the officer shall determine whether another parent or guardian will be available to care for the children. If not, the officer shall attempt to locate an adult relative or another adult with whom the child or children have a significant emotional relationship with who is willing to take responsibility for the children. A preliminary criminal background check shall be completed on the alternative caregiver to ensure the safety and well-being of the child or children.
- 6. Prior to placing children with an adult other than a parent, the officer shall call CYFD State Central Intake (SCI) at 1-800-797-3260 to obtain information from the CYFD FACTS database regarding the potential caregiver. If there are abuse or neglect concerns, or if there is no identified caregiver for a child/children, the officer shall contact CYFD Statewide Central Intake for further support in ensuring the safety of the child/children and in providing support to families and children during the arrest of the parent.

Information and clarification added regarding Ensuring Child Safety Upon Arrest.



Information  
and  
clarification  
added.



7. If the child or children are in school, the officer shall contact the school and advise an authorized school employee of the parent's arrest and of the arrestee's preference for an alternative caregiver to pick up the child or children for temporary placement.
8. In the event that a child or children are present during an arrest, the officer must make alternative arrangements for transportation of the children. Due to safety issues regarding child restraints, an officer shall avoid transporting children inside a caged unit unless absolutely necessary.
9. The arresting officer shall include the following in the Offense/Incident Report;
  - a. The names and contact information for the adults with whom the child or children are left with.
  - b. The name of any CYFD workers or school personnel contacted.
  - c. The names and contact information for any family members identified whether or not the child or children were placed with them.

### J. Miranda Rights

1. Arrestees shall be advised of their *Miranda* rights during custodial interrogations.
2. If the advisement of the *Miranda* rights apply, a verbal or written waiver of the *Miranda* rights must be obtained before any questioning of an arrestee.
3. If the arrestee has not waived his or her *Miranda* rights, no questioning shall be conducted beyond what is necessary to accomplish the booking procedure (name, address, etc.).
4. If the arrestee declines to waive his or her *Miranda* rights to counsel, or if the arrestee after waiving that right elects to reassert it, questioning must cease immediately and no further questioning may be conducted, unless:
  - a. An attorney representing the arrestee is present.
  - b. The arrestee voluntarily initiates a further interview.
5. Arrestees are entitled to make phone calls upon completion of the booking process. Should the arrestee desire to contact his/her attorney, the officer shall reasonably provide reasonable means to place the arrestee in communication with an attorney. These may include:
  - a. Access to telephone.
  - b. Access to a phone book/directory.
6. All felony custodial interrogations shall be electronically recorded pursuant to New Mexico State Statute 29-1-16. It is recommended that ALL interrogations be recorded.

### K. Transportation of Arrestees

1. Prior to beginning each shift, officers shall search the rear seat area of their patrol vehicles for any items of evidence which may have been left by an arrestee or items that may be converted for use as weapons. This search shall be indicated on the officer's daily recap.
2. Arrestees shall be searched and handcuffed before being transported.

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3. Notwithstanding a medical/physical condition, all arrestees shall be handcuffed behind the back and a seatbelt fastened on them during transportation.
4. Transporting officers shall make every attempt to secure the true identity of arrestees. Photographs, tattoos, and other physical markings can be used to ensure positive identification of an arrestee.
5. Security devices in the transporting vehicle, such as door locks and security screens, shall be checked for proper operation.
6. In limited situations, prisoners may be transported in departmental vehicles not designed for prisoner transport. These vehicles include various makes of unmarked units utilized by the department as well as undercover vehicles. However, the following guidelines are to be utilized when transporting a prisoner in a vehicle without a security barrier:
  - a. Prior to transporting an arrestee in vehicles not equipped with security screens, the officer/agent must make a reasonable attempt to contact an officer with a unit equipped with a security screen for transport.
  - b. In those instances where it becomes necessary to transport in a vehicle not equipped with a security screen, the prisoner shall be secured and seatbelted in the right front seat. It is recommended a second officer assist with security of the arrestee by occupying the right rear seat to maintain visual contact.
  - c. Under no circumstances will more than one arrestee be transported in a vehicle not equipped with a security screen unless there are no other practical alternatives. If it is necessary to transport multiple subjects, there will at a minimum, a one to one ratio of transport officers to prisoners.
7. Arrestees shall be seated in the vehicle in accordance with departmental training and in a manner which will allow for observation by the transporting officer.
8. Arrestees will not be allowed to communicate with their attorneys or others while being transported.
9. Transportation of an arrestee to a booking facility may only be interrupted under the following conditions:
  - a. Illness or injury sustained by the prisoner and/or transporting officer.
  - b. An emergency situation requiring immediate action by the transporting officer.
  - c. Vehicle failure.
  - d. In each instance listed above, the transporting officer shall make every attempt to arrange for a second officer to take over the transportation of the prisoner.

### **L. Transportation of Prisoner in Special Situations**

1. Arrestees who become sick or injured during the arrest shall be provided medical attention before being transported to the detention facility.
2. Arrestees who become sick en route to a detention facility may also require medical attention prior to arrival at the facility. Officers must weigh the seriousness of the sickness and the need for immediate medical attention against the potential for escape or possible physical confrontation.
3. Arrestees who are disabled or require special medical attention shall not be prevented from receiving that attention. Discretion shall be used in determining whether or not to transport a disabled person to a detention facility. The type of



equipment, apparatus, or treatment may preclude an officer from safely transporting an arrestee.

4. If the agency typically responsible for transporting prisoners in special situations, such as funerals, reading of wills, and visiting critically ill family members in the hospital, is not available, they may request departmental assistance. DPS will consider these requests on a case by case basis. When officers are assigned to these details, they will follow the procedures outlined above.

### **M. Processing and Temporary Hold of Arrestees**

1. It may be necessary to hold non-combative arrestees at DPS facilities for detainee processing, testing, and temporary detention.
2. Arrestees may only be temporarily held for the amount of time necessary to complete the law enforcement function, then must be transported to a detention facility.
3. Arrestees may only be temporarily held in those areas specifically designated for prisoner detention. These designated areas must meet the following minimum conditions:
  - a. Located within the facility so that it does not affect the daily operations or security of personnel or equipment.
  - b. Have the necessary equipment to secure, test, and process an arrestee.
  - c. Allow access to water, restrooms, and other needs.
  - d. Containers must be made available for weapons security.
  - e. Panic or duress alarms are present or available. (Duress on handheld radio is sufficient).
  - f. The area and arrestee(s) are in a secure area not accessible to the public.
  - g. Escape prevention. (Arrestee must be in holding cell or restrained to a fixed object designed for that purpose).
  - h. Face-to-face visual observations of arrestee at least every thirty (30) minutes.
  - i. Use of audio/video devices to monitor arrestee between thirty (30) minute visual observations if officer is not making face-to-face observation.
  - j. Proximity of desks, computers, filing cabinets, or any other items or devices that could be converted to weapons or used to injure persons or damage/destroy property.
  - k. Fire prevention, evacuation, and suppression for the temporary detention area(s). Fire evacuation plans shall be clearly posted.
4. The arresting officer/agent is responsible for the arrestee unless instructed otherwise by a supervisor and/or relieved by another officer. This includes processing, searching, and articulating the reason for temporary detention of arrestee at a DPS facility.
5. Any officer who is directly dealing with the arrestee must secure their firearm in a locked container prior to entering the temporary detention room or area. Appropriate containers may include, but are not limited to: locking desks, locking filing cabinets, lock boxes, or in vehicle trunks.

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6. If the DPS facility, where arrestee processing is taking place, has a holding cell it will be utilized unless already in use. In situations where a holding cell is not available or present, officers shall secure the arrestee to a fixed object in the designated detention area, if it is equipped and appropriate.
7. Any fixed object used for securing arrestees must be specifically designed for this purpose, and the immediate area must be clear of anything that could be used as a weapon. Arrestees will be restrained to the fixed object by handcuffs, leg shackles, or other restraints designated for that purpose (i.e. flex cuffs).
8. In the event an arrestee becomes unruly or combative, the arresting officer must immediately transport the arrestee to a detention facility for completion of the booking process.
9. Arresting officers, or their designees, must visually monitor arrestees at all times during any processing at a DPS facility.
10. Arrestees must remain securely restrained at all times during the detention, except when the arrestee is being fingerprinted, photographed, tested, utilizing bathroom facilities and drinking fountains, or under special circumstances when the arresting officer deems release necessary.
11. All commissioned personnel shall be provided with initial training on the use of temporary holding area(s) and retraining at least every three (3) years.
12. Documenting the temporary hold:
  - a. Arresting officers shall state the reason, date, and time in and out of the temporary holding area, and any meals or food given to the arrestee during the temporary hold. All officers/agents should keep the Communications Center updated on their location and activities so that the Computer Aided Dispatch (CAD) record can properly reflect this information. The date and time in and out of the holding cell areas can be documented in this manner. The reason for the temporary hold as well as any meals or food given should be documented in the Offense/Incident Report.
  - b. Arresting officers shall also document whether or not the arrestee was restrained to a fixed object within the temporary holding area or placed in a holding cell.
  - c. All information shall be logged in the Offense/Incident Report as part of the narrative.
13. Juvenile arrestees shall be separated from adult arrestees, by both sight and sound. Male and female arrestees must also be separated.
14. The following criteria must be met when designating temporary holding room(s)/area(s):
15. Every temporary holding area(s) shall be inspected by the district commander on an annual basis to ensure compliance with the above-listed requirements. This inspection shall be documented and maintained in a file at the facility.

### **N. Transfer of Arrestees to Detention Facility**

1. Upon arrival at a detention facility, the transporting officer shall secure his/her weapon for safekeeping prior to entering the detention facility.
2. Transporting officers shall not remove restraining devices until such time the detention facility personnel acknowledge control over the prisoner and/or when the removal of restraints does not present an officer safety issue.

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3. Officers are responsible for fingerprinting and photographing all arrestees prior to booking, unless jail personnel complete this part of the processing in their respective jurisdictions.
  - a. In those instances where it is necessary to fingerprint an arrestee, the officer shall complete two fingerprint cards per arrestee. The fingerprint cards shall be attached to booking paperwork for submission to supervisor.
    1. All fingerprint cards shall be filled out completely as possible with available information including FBI or State Identification Numbers.
    2. All fingerprint cards must be signed by the person being fingerprinted. If the person refuses, the officer shall note that by writing "REFUSAL" in the signature block, as well as documenting it in the Offense/Incident Report.
    3. Officers shall ensure that the print quality is good enough to ensure identification.
    4. Completed fingerprint cards shall be forwarded to the Law Enforcement Records Bureau for filing purposes.
  - b. In those instances where it is necessary to photograph an arrestee, the officer shall, at a minimum, take one frontal photograph per arrestee. The photograph shall be attached to the booking paperwork for submission to supervisor.
    1. Reasonable attempts shall be made to ensure that the quality of the photograph is good enough to ensure the identification of the arrestee.
    2. Any injuries sustained during arrest and/or booking procedure should be documented with photographs when possible.
    3. All copies of photographs must have arrestee information written somewhere on them.
    4. Photographs of arrestees shall be included with completed fingerprint cards and forwarded to the Law Enforcement Records Bureau for filing purposes.
4. All booking-related paperwork shall be transferred to the detention facility personnel. The appropriate arrest-related paperwork shall be given to the detention facility personnel to give to the arrestee.
5. The transporting officer shall obtain the signature of the detention facility personnel on the department recognized arrest/booking sheet.
6. The transporting officer shall inform the booking/receiving personnel of any potential safety, medical, or security issues related to the arrestee.
7. The transporting officer shall inform the appropriate agency or court any time the officer believes the arrestee presents a security risk.
8. After an arrestee is transported, and prior to leaving the detention facility, the area of the transporting vehicle occupied by the arrestee shall be searched for articles, including any evidence that may have been left behind by the arrestee. This search shall be documented on the officer's daily recap. In the event evidence or weapons are located, this information shall be included in the Offense/Incident Report.

### **O. Transportation of Arrestees to Medical Care Facilities or Hospitals**

1. Any time an arrestee is transported to a medical care facility or hospital, the transporting officer assumes responsibility over the security of the arrestee until such time as the arrestee is relieved by the medical staff.

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2. The transporting officer shall inform the hospital and/or medical staff of any potential safety, medical, or security issues related to the arrestee.
3. The transporting officer shall remain with the arrestee for the duration of the treatment, as appropriate. In certain circumstances, where the arrestee may be admitted into a medical facility overnight or be transferred to another medical facility outside of the district's boundaries, the arresting officer shall consult with a supervisor to determine the best course of action.

### **P. Escape of Prisoner**

1. In the event an arrestee escapes from custody, the arresting/transporting officer shall do the following, as appropriate:
  - a. Immediately notify dispatch of the escape, give prisoner description, as well as any special considerations, such as, whether or not the subject is considered armed and dangerous, and request a local BOLO (Be On The Lookout) for the escapee.
  - b. Request additional resources as necessary.
  - c. Attempt to establish a perimeter.
2. The telecommunicator (dispatcher) shall do the following when advised of a prisoner escape:
  - a. Contact available supervisor.
  - b. Provide immediate notification of the arrestee escape to all local law enforcement agencies, along with description and any other pertinent information.
3. The imminent threat posed by the escaped arrestee shall determine the appropriate departmental response to apprehend the arrestee. The supervisor shall determine if the Critical Incident Management (CIM) system should be implemented. If CIM is implemented, the supervisor shall ensure that the *7 Critical Tasks* are followed.
4. If the escapee is not found, the arresting/transporting officer shall secure an arrest warrant and generate an Offense/Incident Report of the incident as soon as possible.
5. Enter the escapee information into the appropriate law enforcement database(s); NCIC, NMCIC, etc., as appropriate.

### **Q. Off-Duty Arrests**


1. In the case of any crime occurring in the presence of an off duty-officer, the officer may take necessary action to stop the crime.
2. If such a situation does occur and an officer becomes involved, he/she shall clearly identify himself/herself as a police officer by presenting, at a minimum, his/her badge of office. Once an officer takes action while off-duty, he/she must conduct himself/herself within the guidelines of all Department of Public Safety's policies and procedures.
3. As soon as practical, an off-duty officer involved in such a situation shall request an on-duty officer. The off-duty officer shall turn over the handling of the event to the on-duty officer, unless the continued involvement of the off-duty officer is required by the situation.
4. The off-duty officer shall prepare all appropriate reports as soon as possible.

**R. Arrest of Juveniles (refer to DPS Policy OPR: 38, Juvenile Enforcement and Custody).****S. Citation in Lieu of Arrest**

1. New Mexico State Statute Section 31-1-6 gives law enforcement officers, who arrest a person without a warrant for a petty misdemeanor or any offense under Chapter 17 NMSA 1978, the authority to offer the person arrested the option of accepting a citation to appear in court in lieu of taking them to jail. The following guidelines should be followed when issuing a citation in lieu of arrest:
  - a. The citation issued should contain the name and address of the person cited, the offense charged, and the time and place they are to appear. Unless the person cited requests an earlier date, the time specified on the citation shall be at least three days after issuance of the citation. The officer shall explain the person's right not to sign the citation and the effect of not signing the citation or failing to appear at the time and place stated on the citation.
  - b. The person's signature on the citation constitutes a promise to appear at the time and place stated on the citation. The person cited shall receive one copy of the citation and a duplicate copy shall be filed with the court as soon as practical.
  - c. A citation issued pursuant to New Mexico State Statute Section 31-1-6 is a valid complaint if the person receiving it appears in court.
2. In a situation where the officer issues a citation in lieu of an arrest, the officer shall write "NTC" on the top right corner of the citation indicating the citation is a Non-Traffic Citation.
3. In situations where the option of a citation in lieu of arrest is available, officers may use discretion and consider the following:
  - a. Whether the person is likely to disregard a citation.
  - b. Whether the person, if cited and released, is likely to cause harm to himself or herself or any other person.
  - c. Whether there are other factors that should be considered and are permitted by law and departmental policy.

**T. Release after Arrest**

1. If, after an arrest, it becomes apparent that the probable cause for the arrest has diminished, the arrestee may be released under the following conditions:
  - a. The officer is satisfied that there are no longer sufficient grounds for making a criminal complaint against the person arrested.
  - b. The decision shall be made in consultation with a department supervisor and/or the corresponding district attorney.
  - c. If the arrestee is released, the arrestee shall be released at a safe location and transportation shall be provided, if necessary. If any vehicle towing costs were incurred by the arrestee as a result of this arrest, the Department of Public Safety shall be responsible for paying the towing company or reimbursing the arrestee for towing costs.

**U. Contact and Arrest of Foreign Nationals (Refer to DPS policy OPR: 28 Foreign Nationals; Consular Notification and Access)**

Refer to  
OPR: 28.

**V. Reporting of Arrests**

1. In all cases of physical arrest, the arresting officer shall complete all necessary court documents related to the arrest before turning the arrestee over to the detention center. Additionally, the arresting officer must complete the initial Offense/ Incident Report on the approved NMIBRS report form, within 72 hours of the arrest, and submit it to a supervisor for approval. The report must completely describe the circumstances surrounding the arrest of the individual as well as any additional information required by this or other department policies.

In cases where the arrestee is being prosecuted for charges resulting from the arrest, and the officer is not handling the prosecution, a copy of the approved Offense/Incident Report should be forwarded to the District Attorney's Office in the appropriate jurisdiction.

2. Within the criminal complaint and/or statement of probable cause, officers shall:
  - a. Articulate the reason to justify reasonable suspicion for a stop of a person or vehicle.
  - b. Articulate reasons to justify a pat-down of a person.
  - c. Articulate reasons to justify probable cause for arrest.
  - d. Identify the arrestee with personal information, address, and other appropriate descriptors.

**7.0 ATTACHMENTS****A. Arrest/Booking Report****8.0 APPROVAL**

APPROVED BY: s/John Denko  
DPS Cabinet Secretary

DATE: May 10, 2010